

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 1/22/18

Board/Commission:	CHARTER REVIEW COMMISSION	Meeting Date	December 18, 2017
Location	Mo'ikeha Building, Liquor Control Conference Room 3	Start of Meeting: 4:01 p.m.	End of Meeting: 6:03 p.m.
Present	Chair Jan TenBruggencate; Vice Chair Ricky Watanabe; Members: Virginia Kapali, Carol Suzawa, Galen Nakamura (<i>entered at 4:08 p.m.</i>), and Marissa Sandblom Also: Deputy County Attorney Adam Roversi; Boards & Commissions Office Staff: Administrative Specialist Lani Agoot, Administrator Paula M. Morikami		
Excused	Isaac Cockett		
Absent			

SUBJECT	DISCUSSION	ACTION
	Prior to the start of the meeting, Administrative Assistant to the County Clerk Eddie Topenio gave the Oath of Office to new Commissioner Marissa Sandblom.	
Call To Order		Mr. TenBruggencate called the meeting to order at 4:01 p.m. with 5 Commissioners present.
Communications	Chair TenBruggencate stated that the Commission received documents from the Director of Planning, the Office of Economic Development, and Felicia Cowden, and asked for a motion to receive the items for the record.	Ms. Kapali moved to receive the items for the record. Ms. Suzawa seconded the motion. Motion carried 5:0.
Approval of Minutes	<u>Meeting Minutes of November 27, 2017</u>	Ms. Kapali moved to approve the minutes as circulated. Ms. Suzawa seconded the motion. Motion carried 5:0.
Business	Chair TenBruggencate stated that he would take the agenda item related to creating a new Farm Commission first to accommodate guests that were invited to speak on the agenda item. <u>CRC 2017-11 Proposed Charter Amendment creating a new Farm</u>	

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	<p><u>Commission (deferred 11/27/17)</u></p> <p>Chair TenBruggencate welcomed newly appointed Commissioner Marissa Sandblom who was sworn in prior to the start of the meeting. He then asked Felicia Cowden to speak on her proposed Charter Amendment.</p> <p>Ms. Cowden explained that she proposed the Charter Amendment to create a new Farm Commission because she felt the County wasn't easily able to handle farming related issues; specifically farm worker housing. She said a Farm Commission could handle issues, such as smaller farmers needing help, and large farm operations in relation to pesticide use.</p> <p>Mr. Watanabe asked Ms. Cowden if there was a commission established under the Department of Agriculture to which Ms. Cowden said that the Mayor's Office had an Agricultural Committee, and the State Department of Agriculture had a similar organization.</p> <p>Commissioner Galen Nakamura entered the meeting at 4:08 p.m.</p> <p>Chair TenBruggencate asked the Office of Economic Development (OED) Director George Costa to speak on the agenda item.</p> <p>Mr. Costa referenced two (2) documents he provided to the Commission (on file); a list of the various organizations OED worked with to promote and support agriculture, and a summary of grants processed over the past ten (10) years to help diversify the island's economy. Mr. Costa said the Mayor's Kaua'i Agricultural Advisory Committee (KAAC) reviewed agricultural issues and challenges, offering support to the Mayor and organizations such as the Hawai'i Farmers Union United and the Kaua'i Farm Bureau. He said at the Committee's last meeting they had a robust</p>	

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	<p>discussion regarding farm worker housing and a majority of the Committee supported farm worker housing; however, the Committee needed more details in order to fully support it one way or the other.</p> <p>Ms. Kapali asked how often the Committee met and when it was established to which Mr. Costa said he thought the Committee was established during Mayor Kusaka's administration, and they meet once a month. Ms. Kapali asked if OED provided clerical support for the Committee, and what happened to the results of the Committee's discussions. Mr. Costa confirmed that OED staffed the Committee, and that the results of the Committee's discussions were forwarded to the Mayor to see if the County could offer support with regard to land use or anything related to agriculture.</p> <p>Chair TenBruggencate asked Mr. Costa if OED had plans to fill the vacancy left by the previous agricultural specialist Bill Spitz to which Mr. Costa said the Mayor was leaning towards leaving that up to the next administration.</p> <p>With no further discussion, Chair TenBruggencate called for public testimony.</p> <p>Mr. Ken Taylor stated that he was opposed to a Charter Amendment creating a new Farm Commission, and that OED was doing a good job covering agricultural activities. He said he didn't see a reason for the Commission or the cost it would incur.</p> <p>Hawai'i Farmers Union United (HFUU) Kaua'i Chapter President Ray Maki stated that the HFUU was an organization of family farmers on Kaua'i, and across the state, primarily focused on the needs of the family farmers using commercial organic methodologies. He said the HFUU had questions</p>	

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	<p>regarding the scope of activities and the powers of the proposed Farm Commission. As a member of the KAAC, he said the members' primary concern was the inaction-enaction of a farm worker housing ordinance that actually worked, and was supported by the County and the Planning Commission, to allow farmers to live on their agricultural land in temporary housing facilities to facilitate their farming operations. He added that if there was an application for farm worker housing submitted to the County, the KAAC would like the opportunity provide input and support.</p> <p>Chair TenBruggencate asked if the KAAC had taken a position on farm worker housing to which Mr. Maki said there had been discussions, however, no official position on the matter.</p> <p>Chair TenBruggencate asked if the KAAC would lobby the County Council for legislation in support of farm worker housing. Mr. Costa provided that Committee members were encouraged to lobby once there was a consensus from the group. Chair TenBruggencate asked Mr. Costa if he would speak on behalf of the Committee once they took a position to which Mr. Costa said yes.</p> <p>Ms. Sandblom stated that one component the proposed Farm Commission envisioned providing guidance on was farm worker housing and another component was related to appropriate farming methods. She asked Mr. Maki if KAAC had considered that issue to which Mr. Maki said he personally didn't think Committee members would want a committee or commission judging the appropriateness of farming styles, and that State and County laws were enough to guide and regulate farming activities.</p> <p>Kaua'i County Farm Bureau (KCFB) President Johnny Gordines stated that KCFB had over three hundred (300) members and could speak for the</p>	

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	<p>farmers of Kaua‘i that they didn't need another regulatory agency to define and dictate how they fed the people of Kaua‘i, and that there were organizations already in place locally, federally, and statewide that regulated farming. He said what was needed was more farmers and an agricultural specialist to work with on agricultural issues. Mr. Gordines stated that he was a member of the KAAC and they supported farm worker housing. The Committee had spoken with Councilmember Mason Chock and Deputy Planning Director Ka'ania<u>Ka'aina</u> Hull regarding farm worker housing and the process was moving forward.</p> <p>Ms. Kapali asked Mr. Gordines if filling the agricultural specialist position in OED would provide farmers the assistance in navigating various organizations to which Mr. Gordines replied yes, famers needed a resource at the County level.</p> <p>Mr. Hull stated that Planning Director Michael Dahilig provided the Commission with a letter regarding the Planning Department's official statement. He said the proposed amendment to create a Farm Commission was nebulous and the purpose was unclear. Mr. Hull briefed the Commission on the history of what led to the farm worker housing ordinance being drafted several years ago. He said the ordinance had requirements that had to be met; the land had to be in agricultural dedication, there had to be a farm plan, and the farm operation was required to gross thirty-five thousand (35,000) dollars annually. He added that for the most part, start-up farmers couldn't fulfill the financial requirement unless they lived on the land. Mr. Hull said there were issues with the farm worker housing ordinance and it needed to be amended. The Planning Department's analysis of agricultural lands was that the single greatest thing for some farmers was the ability to have a farm dwelling; however, the worst thing for agricultural lands on Kaua‘i was having farm dwellings on</p>	

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	<p>agricultural lands because it turned into a speculative issue. Mr. Hull said the County needed to be very thorough and vigilant to ensure that farm worker housing on agricultural lands didn't become speculative as did farm dwellings on agricultural lands.</p> <p>Housing Director Kanani Fu stated the Housing Department's limited involvement was with regard to infrastructure.</p> <p>Ms. Cowden stated that creating a Farm Commission wasn't to tell people how to farm but to support small farmers. It was the result of being told that adopting the farm worker housing ordinance was not a viable option because it was too hard to regulate. She said the Farm Commission was a way to help smaller farms, and regulate farm worker housing operations.</p> <p>With no further testimony, Chair TenBruggencate asked the Commission how they wanted to proceed.</p>	<p>Mr. Watanabe moved to receive CRC 2017-11 for the record. Ms. Sandblom seconded the motion. Motion carried 6:0.</p>
	<p><u>CRC 2017-05 Proposed Charter Amendment to remove the Zoning Board of Appeals (Article XIV, Subsection 14.12 - 14.14 (deferred 10/23/17, 11/27/17)</u></p> <p>Chair TenBruggencate noted that the Commission was in receipt of a letter from Planning Director Michael Dahilig regarding the Zoning Board of Appeals, and suggested the item be deferred to the next meeting.</p>	<p>Mr. Watanabe moved to defer CRC 2017-05 to the next meeting. Mr. Nakamura seconded the motion. Motion carried 6:0.</p>
	<p><u>CRC 2017-06 Proposed Charter Amendment to Amend Article XIII relating to the Department of Public Works, Sections 13.01 - 13.03 by</u></p>	

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	<p><u>changing title from County Engineer to Director of Public Works, and changing job description to reflect title change (deferred 10/23/17, 11/27/17)</u></p> <p>Human Resources Director Janine Rapozo stated that the Administration wished to withdraw the proposed amendment.</p> <p>Chair TenBruggencate called for public testimony.</p> <p>Mr. Taylor stated that he was opposed to changing the title and job description of the County Engineer, and that he didn't believe the County did a good job recruiting for the position.</p>	<p>Mr. Watanabe moved to receive CRC 2017-06 for the record. Ms. Kapali seconded the motion.</p> <p>Motion carried 6:0.</p>
	<p><u>CRC 2017-08 Proposed Charter Amendment to Amend Article XIX, Financial Procedures, Section 19.15(C) by adding language to include corresponding maintenance of those lands or property entitlements (deferred 11/27/17)</u></p> <p>Mr. Hull stated that the proposal before the Commission was two-fold; possible acquisitions and the potential maintenance for them, as well as the improvements of existing accesses and to demarcate them for public utilization. He said the Open Space Fund had been in effect over a decade and had accumulated approximately six (6) million dollars by putting .5% of the property tax revenue into the fund annually to be used solely for the purpose of land acquisition. To date, only one (1) acquisition had been completed using the Open Space Fund. He said what had happened in the past in a handful of scenarios when there was the possibility for land acquisition was the question of how the land would be maintained came up. Often times either Public Works or Parks and Recreation were approached to see if they had the ability to provide maintenance; however, in many</p>	

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	<p>scenarios, the lands were outside of their jurisdiction. Mr. Hull said in many situations land acquisition couldn't be pursued because at the end of the day, the property could end up sitting derelict and never be used for its intended purpose, such as public access or recreation. He said one of the hot-button political issues in the community was the closure of public accesses to public resources. In addition to the maintenance of acquisitions, there was a desire to use some of the Open Space funds to improve existing public access of which there are hundreds island wide that existed only on paper because they were not demarcated. Mr. Hull stated that should the Charter Amendment be adopted, it would not mean that every acquisition would require maintenance. In several instances, the County had been able to negotiate stewardship agreements with community organizations to provide maintenance for certain areas. He said currently the Open Space Commission was progressing with a couple of potential acquisitions and didn't want the issue of maintenance or improvement to existing accesses to foreclose the discussion.</p> <p>Ms. Sandblom asked Mr. Hull if entitlements and improvements were the same thing to which he clarified that entitlements included permitting fees, as well as the cost of the improvements. Ms. Sandblom asked for details on the Open Space Fund's one (1) acquisition in terms of acreage and location to which Mr. Hull provided that it was a portion of Black Pot Beach Park for the purpose of expansion through the Park's Master Plan.</p> <p>Mr. Watanabe asked whether or not the Open Space Fund was in the budget to which Mr. Hull provided that it was part of the budget process. Mr. Watanabe asked if maintenance included staff salaries to which Mr. Hull said the Planning Department didn't anticipate needing staff because of the small number of acquisitions that would need maintenance. He added that he hoped in the future the Open Space program would be robust enough to</p>	

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	<p>warrant needing staff to which Mr. Watanabe suggested clearing up the language now rather than waiting for that to occur.</p> <p>Mr. Nakamura said the proposed language referenced lands that had been acquired, <i>"The monies in this fund shall be utilized for the purchasing or otherwise acquiring lands or property entitlements -and the corresponding maintenance of those lands or property entitlements"</i>, and suggested adding <i>"or existing public access or open space."</i> Mr. Hull said the Planning Department would be amenable to the modified language, adding that the Department would also take measures to ensure that exactions for accesses were processed through subdivision and the Planning Commission.</p> <p>Chair TenBruggencate asked Mr. Hull if he was willing to meet with the Planning Department staff and the Administration and draft amendments to the language to which Mr. Hull said yes. Mr. Hull requested the item be deferred because the Open Space Commission had not reviewed the proposed language due to issues with quorum. He said the Department wanted to get the proposed amendment to the Charter Review Commission for their review, and stated that the Department was in no way trying to circumvent the Open Space Commission.</p> <p>Ms. Suzawa inquired how long it took to accumulate six (6) million dollars in the Open Space Fund to which Mr. Hull said he would have to check when the Black Pot Beach Park expenditure was made. He provided that the fund was accumulating approximately four hundred (400) to five hundred (500) thousand dollars a year.</p> <p>Ms. Suzawa stated that her concern was that maintenance costs could hinder the ability to acquire land and asked if there was language related to keeping a fund balance. Mr. Hull explained that the expenditures of the fund had to</p>	

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	<p>go through the public budget process every year at the County Council which allowed for prioritization of the monies.</p> <p>Ms. Kapali asked if a cap would be put on the amount used for maintenance and improvements to which Mr. Hull said the Department would be amendable to a cap; currently there was a 5% cap for administrative purposes. Chair TenBruggencate urged the Commission not to tie the hands of the Open Space Commission and let them make those decisions.</p> <p>Ms. Cowden stated that she had attended many Open Space Commission meetings and agreed that there were times when properties couldn't be acquired because of maintenance. She said she wanted to see an agreed upon ceiling of maybe 25% of the funds that could be used for maintenance to avoid half of the fund, or more, being used for maintenance on past projects.</p> <p>With no further discussion, Chair TenBruggencate asked for a motion to defer the item.</p>	<p>Mr. Watanabe moved to defer CRC 2017-08. Mr. Nakamura seconded the motion. Motion carried 6:0.</p>
	<p><u>CRC 2017-10 Proposed Charter Amendment to Article III, County Council, Section 3.03 relating to terms (deferred 11/27/17)</u> <u>Four (4) Councilmembers serve two (2) four-year terms full time (staggered), and three (3) Councilmembers serve two (2) two-year terms part time</u></p> <p>Chair TenBruggencate called for public testimony.</p> <p>Mr. Lenny Rapozo stated that he was opposed to term limits and districting for the island of Kaua'i; limiting terms took away his right to choose. He said he didn't believe the rhetoric regarding uninformed voters because</p>	

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	<p>history had proven, through the removal of former Mayor Tony Kunimura and former Governor Neil Abercrombie, that the people of Kaua‘i were informed voters. Chair TenBruggencate asked Mr. Rapozo if he thought there should be two-year or four-year terms to which Mr. Rapozo said two-year terms.</p> <p>Mr. Taylor stated that he was opposed to the proposed amendment as it was written, however, would support two (2) four-year terms and four (4) three (3) staggered. He said there were municipalities around the country larger than Kaua‘i that had five-member councils, and suggested that Kaua‘i look at that as an option. Mr. Taylor said having seven (7) councilmembers elected at the same time created problems because there could be as many as twenty-two (22) people at a forum and nobody would have time to articulate their position.</p> <p>Ms. Cowden stated that what was important to her in her proposal was that four (4) councilmembers were full-time, with full-time pay, and that it was their only job because it would provide stability in the County Council.</p> <p>Mr. Watanabe stated that he didn't agree with Ms. Cowden and asked if the Commission could defer to the County Attorney whether or not it was unconstitutional to tell someone they could only have one (1) job.</p> <p>Chair TenBruggencate said he had a fundamental difference of opinion because throughout the country, citizens elected legislators who lived and worked in their community, and served part-time in government, and there was great value in that. He added that he didn't think the County's legislative body should be a profession.</p> <p>Ms. Sandblom asked Ms. Cowden whether or not, regardless of the term</p>	

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	<p>limit, councilmembers would serve the same amount of hours to which Ms. Cowden clarified that four (4) councilmembers would be full-time and three (3) would be part-time. Ms. Sandblom asked if that meant the four (4) full-time councilmembers would work forty-hour weeks to which Ms. Cowden said yes; the goal was to have them work and be paid as a full-time position.</p> <p>Mr. Watanabe said one of his concerns was there had been ten (10) different scenarios proposed for council terms since 1972 that passed, and the cost of putting proposals on the ballot added up. Additionally, the Employee Retirement System (ERS) had to make a decision as well because at one point councilmembers were considered part-time; they were now full-time and received benefits. Mr. Nakamura asked Mr. Watanabe if all councilmembers, with the exception of the Chair, were paid the same to which Mr. Watanabe said yes.</p> <p>Chair TenBruggencate asked Mr. Watanabe if he wanted to refer the item to the County Attorney for an opinion to which Mr. Watanabe said yes.</p> <p>Mr. Nakamura asked for clarification of the legal questions to which Mr. Watanabe said his first question was whether or not the ERS considered councilmembers full-time upon retirement and would have a problem staggering that requirement; and, could an employed councilmember be told he/she could only have one (1) job.</p> <p>Chair TenBruggencate stated that, with regard to the staggering of full-time councilmembers, the ERS would have to consider making some of the current councilmembers part-time.</p> <p>Ms. Suzawa commented that she would have a difficult time determining</p>	<p>Mr. Watanabe moved to refer CRC 2017-10 to the County Attorney for an opinion.</p>

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	<p>who was running for four-year terms and who was running for two-year terms, and asked if that would be an issue. Ms. Cowden clarified that people could run for both terms.</p> <p>Chair TenBruggencate stated that there was a motion on the floor to defer, adding that should the motion die for lack of a second, the Commission had the following options: accept the proposal as written, amend the proposal, or receive the proposal. Chair TenBruggencate asked for a second on the motion to defer. The motion failed due to the lack of a second.</p> <p>Ms. Suzawa stated that she had a problem with the word "defer" and asked if a motion to "refer" to the County Attorney was a new motion to which Chair TenBruggencate said yes. Chair TenBruggencate clarified that the Commission could "refer and defer".</p> <p>Chair TenBruggencate stated that after consulting with their attorney, the Commission had the option of moving the Executive Session items into Open Session, and asked the Commission for their preference. Mr. Nakamura and Mr. Watanabe said they preferred to take up the items in Executive Session. Chair TenBruggencate asked to take the Election of Chair and Vice Chair before entering into Executive Session.</p>	<p>Ms. Suzawa moved to defer CRC 2017-10 and refer to the County Attorney for an opinion. Mr. Watanabe seconded the motion. Motion carried 6:0</p>
	<p><u>CRC 2017-12 Election of Chair and Vice Chair for calendar year 2018</u> <u>(deferred 11/27/17)</u></p> <p>Chair TenBruggencate called for public testimony to which there was none.</p>	<p>Ms. Kapali nominated Commissioner Suzawa as Chair. Mr. Watanabe seconded the motion. Motion carried 6:0. Ms. Kapali nominated Commissioner</p>

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		TenBruggencate as Vice Chair. Mr. Watanabe seconded the motion. Motion carried 6:0.
Executive Session	<p>Mr. Taylor stated that he was disappointed the Commission chose to go into Executive Session to discuss the findings of the proposed Charter Amendments. He said it wasn't good open government.</p> <p>Chair TenBruggencate stated that he agreed with Mr. Taylor, but that the discussion was regarding the Attorney's opinion, and that the items would be back on the agenda for public testimony in the future.</p>	Mr. Nakamura moved to go into Executive Session at 5:43 p.m. Mr. Watanabe seconded the motion. Motion carried 6:0.
Return to Open Session	<u>Ratify Commission actions taken in Executive Session for items ES-001 and ES-002</u>	<p>The Commission resumed in Open Session at 6:01 p.m.</p> <p>Mr. Nakamura moved to ratify the actions taken in Executive Session. Mr. Watanabe seconded the motion. Motion carried 6:0.</p>
Announcements	<u>Next Meeting: Monday, January 22, 2018, 4:00 p.m., in the Mo'ikeha Building, Meeting Room 2 A/B</u>	
Adjournment		Chair TenBruggencate adjourned the meeting at 6:03 p.m.

Submitted by: _____
Lani Agoot, Administrative Specialist

Reviewed and Approved by: _____
Jan TenBruggencate, Chair

- ☐ Approved as circulated.
- ☐ Approved with amendments. See minutes of _____ meeting.